were to be agreed to in writing by the parties to the contract. *Held,* that the sureties were not discharged by an extension of the time fixed for the performance accorded by the government to the contractor; and that the assent of the sureties was not required to the agreement in writing by the parties to the contract in case of any changes in the plans or specifications. *United States* v. *McMullen* (1912) 32 Sup. Ct. 128.

The main ground of defense (which was upheld in the Circuit Court of Appeals; see 167 Fed. 460) was based on the extension of time. Beyond the terms of the contract the sureties did not assent to any change. It was contended that a provision that the contractor might ask for an extension of time, and the government grant it, if it so minded, was not a provision, whereby the sureties could be held to have assented in advance; that the provision in question, being optional on both sides, excluded the idea of anything contractual in its nature. But the Supreme Court says, "this contract definitely contemplated what the nature of the work made manifest, that it might be necessary or very convenient to extend the time, that the sureties must be taken to have contemplated it also as permissible against themselves." Perhaps no case has gone to this length. Heretofore courts always insisted that the power to make such an alteration in a contract, be expressly reserved. Subsequently a further step was taken where one party had the right to make changes, in which case the sureties were presumed to contemplate the making of such changes. *Hayden* v. *Cook,* 34 Neb. 670; *Village of Chester* v. *Leonard,* 68 Conn. 495. The present case goes further and holds that where the right or power to make or grant any changes or alterations is optional with one party to the contract, such a provision is sufficient to hold the sureties liable, they being deemed to have assented to the change in advance.

SPECIFIC PERFORMANCE—MUTUALITY OF CONTRACT.—Complainant and defendant contracted for the exchange of lands. The contract provided that time was of its essence, but also made an allowance of sixty days in which title might be perfected. Complainant's wife did not sign the agreement. The defendant gave notice of refusal to perform. Complainant sought to specifically enforce, after having made tender of a deed of his land signed by himself and wife. *Held,* that the contract was not lacking in mutuality, so as to forbid specific performance, for the inchoate right of dower is not an estate in the land, but at most an incumbrance; and the contract contemplated that the parties should have time to perfect their titles. *Cohen* v. *Segal* (Ill. 1911) 97 N. E. 222.

COOKE, J., dissented on the ground that the principle governing is the same in this instance as in the case of *Gage* v. *Cummings,* 209 Ill. 120, and that instead of attempting to distinguish the two cases, the Gage case should have been expressly overruled. The latter case was distinguished on the ground that dower is not such an estate in the land as the wife owned in the Gage case. It is a general rule that a contract will not be specifically enforced unless it is obligatory on both parties, nor unless both parties, at the time of its execution, have the right to resort to equity for its specific performance. *Norris* v. *Fox,* 45 Fed. 406; *Boucher* v. *Buskirk,* 2 A. K. Marsh

345; *Shenandoah Valley R. R. Co.* v. *Dunlop,* 86 Va. 346. But this rule is subject to modification, *French* v. *Boston Nat. Bank,* 179 Mass. 404, as in cases where the original quality lacking has been subsequently supplied. *Woodruff* v. *Woodruff,* 44 N. J. Eq. 349. The decision in the principal case bears analogy to this modification, for although the wife's signature was lacking from the original contract, this had been supplied by the signature by her on the deed tendered the vendee. There are decisions refusing to recognize such modification of the general rule. *Luse* v. *Deitz,* 46 Iowa, 205; *Harris* v. *Mott,* 14 Beav. 169; *Beard* v. *Linthicum,* 1 Md. Ch. 345. It is difficult to distinguish these decisions from those announcing the doctrine that, while it is true that the vendor must be ready and able to convey a marketable title to the vendee, it is not necessary that he possess that title at the time the contract is entered into; that he is only required to be able to convey it by the time the decree is entered. *Maryland Const. Co.* v. *Kuper,* 90 Md. 529; *Mason* v. *Caldwell,* 5 Gilm. 796. This line of reasoning influenced the majority of the court in arriving at its conclusion, for it says that, although the contract could not have been enforced against the wife, because she had not signed it, *Ebert* v. *Arends,* 190 Ill. 221; *Cowan* v. *Kane,* 211 Ill. 572, it could be enforced against the husband for the dower interest was only an incumbrance, which was removed by the wife's joining in the deed, hence there was no lack of mutuality of remedy and the vendor could specifically enforce the contract against the vendee.

TRADE-MARKS—INJUNCTION—CLEAN HANDS.—Plaintiff, a stock corporation, manufactures and sells certain proprietary remedies under the name of Dr. Pierce's remedies. It also incidentally conducts a hospital and engages in the practice of medicine. It seeks to enjoin the defendant, whose name is Pierce, from using his name in the sale of similar remedies of his own manufacture. The defendant claims that since the laws and decisions of New York make it illegal for a stock corporation to practice medicine and conduct a hospital, the plaintiff has no standing in a court of equity and the injunction should not be issued. *Held,* by a divided court, that the defendant should be enjoined from the use of the word Pierce in connection with his remedies. *World's Dispensary Medical Association* v. *Pierce* (N. Y. 1911) 96 N. E. 738.

The general rule that in order to obtain relief the plaintiff must come into equity with clean hands is too well known to require citation. This rule is applied in trade-mark cases where the plaintiff is shown to have made material misrepresentations with respect to the article or the mark involved. *Uri* v. *Hirsch, et al.,* 123 Fed. 568; *Hilson Company* v. *Foster,* 80 Fed. 896. Some of the limitations on the maxim seem not so readily recognized and applied by the courts. One of these limitations is that the court will confine its inquiry into the acts of the plaintiff, to the subject-matter of the controversy, and will not go outside this subject matter in order to question the standing of the plaintiff or to impeach his conduct. *Shaver et al.* v. *Heller and Merz Company,* 108 Fed. 821; *Dering* v. *Earl of Winchelsea,* 1 Cox 318; *Lewis Appeal,* 67 Pa. 153; *Mossler* v. *Jacobs,* 66 Ill. App. 571; *Equitable Gaslight Co. Baltimore, etc. Mfg. Co.,* 65 Md. 73. In the principal case, the defendant seeks